

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Interstate Power and Light Company	:	
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Application for Approval of Affiliated	:	02-0571
Interest Contracts.	:	

**STAFF OF THE ILLINOIS COMMERCE COMMISSION RESPONSE TO MOTION  
FOR STATUS HEARING**

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), by its attorneys, and responds to the Motion For Status Hearing filed by Interstate Power and Light Company (“IPL”). The Staff respectfully requests that IPL’s Motion be denied and that IPL be directed to immediately respond to Staff Data Request DB 3.1.

Staff recognizes that, pursuant to Section 200.300 of the Commission’s Rules of Practice (83 Ill. Admin. Code 200.10 *et seq.*), IPL may request a prehearing conference when it appears that any of the goals of subsections (a)(1) through (a)(7) of Section 200.300 can be attained. IPL argues that a prehearing conference is necessary because “the status hearing did not simplify issues or set discovery parameters because prior to the hearing there did not appear to [be] any disagreement on the issues to be litigated in this proceeding.” IPL argues that there is a dispute about what issues are relevant to this proceeding because “Staff served IPL with an unreasonable data request exceeding the scope of this proceeding.” Motion, pp. 1-3

IPL's motion is premature and an attempt to circumvent established procedural practice. Presently in this proceeding what is at issue is a discovery dispute between Staff and IPL. IPL has refused to provide the name of a contact person for one of the "other bids" referenced in IPL witness Mineck's testimony. IPL Exhibit A. The established procedure for resolving such a dispute is the filing of a motion to compel by Staff, a reply by IPL and a response by Staff. IPL's prehearing conference request is an attempt to circumvent that established procedural practice and more importantly place a severe restriction on Staff's investigation of IPL's affiliate contract which is required under the PUA ("If it be found by the Commission, after investigation and a hearing, that any such contract or arrangement is not in the public interest, the Commission may disapprove such contract or arrangement." 220 ILCS 5/7-101(3)). By trying to avoid established procedural practice IPL is attempting to avoid established law that supports the scope of Staff's request to IPL. The Commission's rules of practice support a broad scope of discovery:

It is the policy of the Commission to obtain full disclosure of all relevant and material facts to a proceeding.

83 Ill. Adm. Code 200.340. As Illinois courts have done, the Commission would have to liberally interpret the rules on discovery in order to advance the "search for truth".

The purpose of discovery is to facilitate a discovery of facts and an application of the law so that justice results. (Tansey v. Robinson (1960), 24 Ill. App. 2d 227, 235) The underlying reason for the liberalization of modern discovery rules is "to replace the traditional 'combat' theory of litigation with the more equitable principle that litigation should be a joint search for the truth." (Payne v. Coates-Miller, Inc. (1979), 68 Ill. App. 3d 601, 606).

If the information that is sought appears to be reasonably calculated to lead to the discovery of admissible evidence, then the information must be disclosed:

As we said in Krupp v. Chicago Transit Authority, 8 Ill. 2d 37, 41. 132 N.E. 2d 532, 535, discovery before trial ‘presupposes a range of relevance and materiality which includes not only what is admissible at the trial.’ See also, People ex. rel. Terry v. Fisher, 12 Ill. 2d 231, 236-237, 145 N.E. 2d 588, where we observed that the objective to be obtained under the rules is the expeditious and final determination of controversies in accordance with the substantive rights of the parties. Additionally, the increasing complexity and volume of present-day litigation involves frequent recourse to discovery procedures, and to unduly limit their scope would serve only to inhibit pretrial settlements, increase the burden of already crowded court calendars, and thwart the efficient and expeditious administration of justice.

Monier v. Chamberlain, 35 Ill. 2d 351, (1966). IPL is attempting to prevent the disclosure of such information by Staff. IPL’s attempt to divert attention to the scope of 7-101(3) should be rejected. IPL’s motion clearly is an attempt to limit Staff’s investigation that is required under the law.

Should the Administrative Law Judge decide that now is the appropriate time to address the scope of 7-101(3) and therefore determine whether “the bid evaluation process has relevance” under 7-101(3), prior Commission orders and case law do not support the narrow scope of 7-101(3) advocated by IPL and its ultimate harmful impact of limiting discovery. IPL recognizes that the legal standard to be applied in this proceeding is “public interest”. However, the Commission has held in the past that with respect to public interest/public convenience the Commission has broad discretion to decide whether a proposed transaction should be approved under the standard. ICC Docket No. 95-0615, p. (1977)<sup>1</sup>. Furthermore, the court has stated that because the legislature recognized that it would be impractical to attempt to provide precise criteria to be considered in every transaction regulated by the Commission the Commission

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<sup>1</sup> The Commission in the past has used the phrase public convenience and public interest interchangeably. See ICC Docket No. 96-0320, p. (1977)

was given broad discretion. Illinois Power Co. v. Illinois Commerce Commission, 111 Ill. 2d 505 (1986). The bid evaluation process involves a least cost determination. The public interest standard for approval of the assignment should include such a least cost analysis. It would be unreasonable for the Commission to determine that the assignment between IPL and its affiliate benefits the public without resolving the question as to whether it was the least cost alternative available to IPL. Staff is not seeking to determine the actual cost to put in rate base, that determination is to be saved for another day (... the consent to, any contract or arrangement under this Section or Section 16-111, does not constitute approval of payments thereunder for the purpose of computing expense of operation in any rate proceeding. 220 ILCS 5/7-101(3)). Staff is seeking to determine whether this project was selected based upon it being the least cost alternative. The analysis of the bids depends in part upon the heat rates used for the plants, the price of gas and other relevant issues. Staff as part of its investigation wants to confirm with the 2nd lowest bidder that there were no disagreements over these items and other relevant issues. For that reason Staff sent IPL Staff Data Request DB-3.1, which IPL has refused to answer in full. In order for Staff to follow through on its investigation, IPL should be ordered to respond to Staff Data Request DB-3.1

**WHEREFORE**, for the reasons set forth above, Staff respectfully submits that the Motion For a Status Hearing should be denied and that IPL be directed to immediately respond to Staff Data Request DB-3.1.

Respectfully submitted,

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Steven G. Revethis  
John C. Feeley

Counsel for the Staff of the  
Illinois Commerce Commission  
160 North LaSalle Street  
Suite C800  
Chicago, Illinois 60601  
(312) 793-2877

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